flicting lien, though the common debtor be alive, where the estate is being administered in a court of chancery.

It is to be noted, however, that of the authorities relied upon by the court in the case last cited, several, if not all, involved the winding up of the estates of deceased debtors, *e. g. Tazewell* v. *Whittle*, 13 Gratt. 345; *Woodyard* v. *Polsley*, 14 W. Va. 211; *Shewen* v. *Vanderhorst*, 1 Russ. & Mylne, 347; we have not examined the others.

The general subject of the statute of limitations as a personal plea is discussed editorially in 3 Va. Law Reg. 63.

COMMON CARRIERS—BILL OF LADING—"ACTUAL CUSTODY" CLAUSE.—The defendant railroad company issued to the plaintiff a through bill of lading for certain cotton shipped from a point in Texas consigned to Liverpool in England. The bill of lading contained the usual clause providing that in case of any loss or damage to the property while *en route*, "that carrier alone shall be held liable therefor in whose actual custody the goods shall be at the time of the loss."

When the cotton reached New Orleans, the terminus of the defendant, it was deposited on a wharf belonging to the defendant, from which it was to be loaded on steamships of the connecting carrier. The contract between the railroad company and the steamship company required the latter to receive the cotton when placed upon the wharf, and notified of the fact by the railroad company. The railroad company, after placing the cotton in question on the wharf, had duly notified the steamship company and requested its removal, but on account of delay due to the non-arrival of its vessels and other causes the latter company had not done so. While remaining upon the wharf awaiting transhipment by the steamship company, the cotton was burned, and the owners instituted suit against the railroad company for its value.

The company based its defense on the clause of the bill of lading declaring that it should be deemed to have fully performed its part of the contract, "upon delivery of said cotton to its next connecting carrier;" and that the depositing of the cotton upon the wharf and tendering it to the connecting carrier, amounted in law to a delivery. *Held*, that this clause must be read in connection with the other clause quoted, that only that carrier in whose "actual custody" the goods were should be responsible for loss or damage, and that a constructive delivery to the steamship company did not relieve the railroad company of the actual custody, even if the steamship company's failure was a breach of its contract, and hence the railroad company was liable for the loss. *Texas & Pac. R. Co.* v. *Claylor*, 19 Sup. Ct. 421.

"It cannot be supposed," says Mr. Justice Harlan, who delivered the opinion, "that the parties understood the contract to mean that the connecting carrier was to be deemed to have actual custody from the moment it could have taken actual custody if it had seen proper to do so. So far as the shipper was concerned, the actual custody of the first carrier could not cease until it was in fact displaced by the actual custody of the connecting carrier. It may be that the railway company has good ground for saying that, as between it and the connecting carrier, the latter was bound to take actual custody whenever the railway company was ready to surrender possession, and thereby relieve the latter from possible liability to the shipper in the event of the loss of the cotton while in its custody. That is a

matter between the two carries, touching which we express no opinion. But we adjudge that the shipper cannot be compelled, when seeking damages for the value of his cotton destroyed by fire in the course of its transportation, to look to any carrier except the one who had actual custody of it at the time of the fire. One of the conditions imposed upon him by the contract was that if any carrier became liable to him he should have no remedy except against the one having such actual custody. That remedy should not be taken from him by a construction of the contract inconsistent with the ordinary meaning of the words used."

MEASURE OF DAMAGES—ENTIRE DAMAGES—MASTER AND SERVANT.—Defendant, a railway company, compromised the plaintiff's claim against it for personal injuries, by agreeing to employ the plaintiff at a fixed monthly salary, with certain additional perquisites, for as long a time as he was disabled from doing full work; he, in the meanwhile, to do such work as he could. The injuries were permanent. Defendant subsequently repudiated the contract, discharged the plaintiff, and refused to pay the stipulated wages. *Held*, that the plaintiff might recover entire damages in a single action, and was not confined to successive actions for damages as the wages accrued under the contract. *Pierce* v. *Tenn. Coal etc. Co.*, 19 Sup. Ct. 335.

There is much comflict of authority upon the point decided. The question is one of first impression in the United States Supreme Court, and we are glad to find that court adopting what seems to be the sounder principle. Many cases hold that where a servant is thus wrongfully discharged, he must bring successive actions for each installment of wages as they accrue. See *McMullan* v. *Dickinson Company*, 60 Minn. 156, reported also in 51 Am. St. Rep. 511, with an extensive note collecting the authorities; 40 Cent. L. J. 300. The latter rule is probably juster in the abstract, since whether the discharged servant will secure other employment, at a greater or less rate of compensation, is so extremely uncertain, that it is well nigh impossible to estimate the prospective damages. On the other hand, such a rule would in many cases be so intolerably inconvenient as to result, itself, in the grossest injustice. The rule requiring successive actions would have operated as a great hardship in the case mentioned, where the plaintiff, being permanently disabled, and therefore entitled to the stipulated wages during his lifetime, would have been driven to an action against the railroad company every month during the remainder of his life.

After a review of the authorities, the court, speaking through Mr. Justice Gray, said:

"If these facts were proved to the satisfaction of the jury, the case would stand thus: The defendant committed an absolute breach of the contract at a time when the plaintiff was entitled to require performance. The plaintiff was not bound to wait to see if the defendant would change its decision and take him back into its service, or to resort to successive actions for damages from time to time, or to leave the whole of his damages to be recovered by his personal representative after his death. But he had the right to elect to treat the contract as absolutely and finally broken by the defendant; to maintain this action, once for all, as for a total breach of the entire contract; and to recover all that he would have received in the future, as well as in the past, if the contract had been kept. In